

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>LONDER B. DAVIS,</b>	§	
<b>Plaintiff,</b>	§	
	§	<b>Civil Action No. 3:17-CV-1002-M-BH</b>
<b>v.</b>	§	
	§	
<b>MEGAN J. BRENNAN, Postmaster</b>	§	
<b>General,</b>	§	
<b>Defendant.</b>	§	

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

After reviewing the Findings, Conclusions, and Recommendation of the United States Magistrate Judge for plain error, I am of the opinion that the Findings and Conclusions of the Magistrate Judge are correct and they are accepted as the Findings and Conclusions of the Court.

The Supreme Court recently held that the mandatory exhaustion requirement of Title VII is “not a jurisdictional prescription delineating the adjudicatory authority of courts.” *Fort Bend Cty., Tex. v. Davis*, — U.S. —, 139 S. Ct. 1843, 1851 (2019). With respect to Title VII claims of federal employees such as the plaintiff in this case, the Fifth Circuit has specifically held that “the requirement of timely contacting an EEO counselor is non-jurisdictional.” *Baker v. McHugh*, 672 F. App’x 357, 361 (5th Cir. 2016) (citations omitted); *see Henderson v. U.S. Veterans Admin.*, 790 F.2d 436, 439-40 (5th Cir. 1986) (“The timely notification to the appropriate administrative authority of a complaint of discrimination is a precondition to suit and may bar the claim. Lack of timely notification, however, does not deprive the court of subject matter jurisdiction.”) (citations omitted). Because the failure to exhaust is a condition precedent rather than a jurisdictional prerequisite, there is no issue with subject matter jurisdiction. The Court agrees that the plaintiff’s claims are

time-barred, however.

For the reasons stated in the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, by separate judgment, the plaintiff's complaint will be **DISMISSED with prejudice** under 28 U.S.C. § 1915(e)(2)(B).

SIGNED this 30 day of April, 2020.

  
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**BARBARA M. G. LYNN**  
**CHIEF JUDGE**